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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 12, 1998

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE980727

To Revise its Fuel Factor

Pursuant to Va. Code § 56-249

PROTECTIVE ORDER

On November 4, 1998, Virginia Electric and Power Company ("Virginia Power") filed a motion requesting the entry of a protective order setting forth the procedures by which confidential information shall be handled generally in this proceeding, which is set for hearing on November 30, 1998.

UPON CONSIDERATION of Virginia Power's request, and in view of the abbreviated procedural schedule for fuel factor filings, the Commission is of the opinion and finds that a protective order should be entered without requests for comments on Virginia Power's motion. Any protestant or the Commission Staff may, however, request modification of this order. Accordingly,

IT IS ORDERED THAT any documents, materials, and information to be produced by Virginia Power, either for itself or for its affiliates, or to be produced by any other party ("Other Party") in this proceeding in response to Commission orders, Commission Staff ("Staff") data requests or properly propounded interrogatories or requests for production of documents in this

proceeding, which documents, materials, or information the producing party designates as confidential ("Confidential Information"), shall be examined and used only in accordance with the following conditions:

(1) All Confidential Information produced to Virginia Power, Staff, or Other Parties shall be used solely for the purposes of this proceeding (including any appeals).

(2) Access to Confidential Information shall be specifically limited to Virginia Power, Staff or Other Parties, their counsel and expert witnesses, and to support personnel who are working on this case under the direction of their counsel or expert witnesses and to whom it is necessary that the Confidential Information be shown for the purposes of this proceeding, so long as each such person has executed an Agreement to Adhere to the Protective Order ("Agreement"), which is Attachment A to this Protective Order. All Agreements must be promptly forwarded to the producing party upon execution.

(3) In the event that Virginia Power, Staff or Other Parties seek permission to grant access to any Confidential Information to any person other than the persons authorized to receive such information under paragraph (2) above, the party desiring permission shall seek the consent of counsel for the producing party. In the event of a negative response, the party

seeking disclosure permission may apply to the Commission for such permission.

(4) The producing party shall be under no obligation to furnish Confidential Information to persons other than those authorized to receive such information under paragraph (2) above unless specifically ordered by the Commission to do so. Parties are encouraged to seek consents to the maximum extent practicable.

(5) In the event that Virginia Power or Other Parties contend that they should not be required to produce specific documents, materials or information due to their commercially or competitively sensitive nature, ("Competitively Sensitive Information"), Virginia Power or such Other Party shall bear the burden of proving that such specific documents, materials, or information should not be discoverable. For purposes of responding to data requests propounded by the Staff in this proceeding, the production and handling of Competitively Sensitive Information shall be governed by the terms of an appropriate nondisclosure agreement between the producing party and the Staff, and the terms of this order.

(6) The Clerk of the Commission is directed to maintain under seal all documents, materials, and information filed with the Commission in this proceeding which the producing party has

designated, in whole or in part, as Confidential Information or Competitively Sensitive Information.

(7) In the event Virginia Power, Staff or Other Parties seek to introduce at a hearing testimony, exhibits, or studies that disclose Confidential Information, the Staff or the party seeking such introduction shall:

- (a) notify the producing party at least three (3) days in advance of any such hearing regarding testimony that is not prefiled unless a shorter period would not unduly prejudice the producing party;
- (b) if such testimony is prefiled, file such testimony, exhibits or studies with the Commission under seal and serve on all parties of record copies of the testimony, exhibits, or studies deleting those parts that contain references to or portions of the designated Confidential Information. The testimony, exhibits, or studies containing the Confidential Information filed with the Commission shall be kept under seal unless and until the Commission rules to the contrary. Each party shall, upon signing Attachment A to this Protective Order, receive a copy of those parts of the testimony, exhibits, or studies that contain references to or portions of the Confidential Information and each party and counsel shall be bound by this Order insofar as it

restricts the use of and granting of access to the Confidential Information.

(8) Oral testimony regarding Confidential Information, if ruled admissible by the Commission, will be taken in camera and that portion of the transcript recording such testimony shall be placed in the record under seal.

(9) In the event Virginia Power, Staff, or Other Parties seek to introduce at a hearing testimony, exhibits or studies that disclose Competitively Sensitive Information, the Staff or the party seeking such introduction shall notify the producing party at least three (3) days in advance of any such hearing unless a shorter period would not unduly prejudice the producing party. Any testimony regarding Competitively Sensitive Information shall be taken in camera and in the presence of only those persons who have been granted access to the specific Competitively Sensitive Information pursuant to a nondisclosure agreement with the producing party. That portion of the transcript recording such testimony shall be placed in the record under seal.

(10) No person authorized under this Protective Order to have access to Confidential Information shall disseminate, communicate, or reveal any such Confidential Information to any person not specifically authorized under this Protective Order to have access.

(11) At the conclusion of this proceeding (including any appeals), any originals or reproductions of any Confidential Information produced pursuant to this Order shall be returned by Virginia Power and Other Parties to the producing party (or destroyed) if requested to do so by the producing party. At such time, any originals or reproductions of any Confidential Information in Staff's possession will be returned to the producing party, destroyed or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the Confidential Information. Insofar as the provisions of this Protective Order restrict the communications and use of the Confidential Information produced thereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the Confidential Information.

(12) This Protective Order does not preclude Virginia Power, Staff or any Other Party from arguing, prior to public disclosure, that documents, materials, and information received under the Order should not be treated as confidential. But in no event shall any party disclose Confidential Information it has received subject to the Protective Order absent a finding by the Commission that such information does not require confidential treatment. If Virginia Power, Staff or any Other Party desires to make such an assertion, the producing party shall be given

reasonable notice before being required to bear the burden of proving the contrary, and reasonable notice shall be at least three (3) days in advance of a hearing in connection with testimony that is not prefiled and that contains Confidential Information. The burden of proving that documents, materials, or information require confidential treatment as trade secrets, commercially or personally sensitive information, or other grounds for confidential treatment shall be upon the proponent of maintaining the documents, materials, or information in confidence.

(13) A producing party is obligated to separate non-confidential and noncompetitively sensitive documents, materials, and information from Confidential Information and Competitively Sensitive Information wherever practicable, and to provide the non-confidential and noncommercially sensitive documents, materials, and information.

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AGREEMENT TO ADHERE TO PROTECTIVE ORDER

I, \_\_\_\_\_, on behalf of and representing  
\_\_\_\_\_, hereby acknowledge having read and  
understood the terms of the Protective Order entered in this  
proceeding by the Commission on November 12, 1998, and agree to  
treat all Confidential Information that I receive in connection  
with this Case No. PUE980727 as set forth in that Protective  
Order.

Signature: \_\_\_\_\_

On behalf of: \_\_\_\_\_